

112TH CONGRESS  
1ST SESSION

# H. R. 205

To amend the Act titled “An Act to authorize the leasing of restricted Indian lands for public, religious, educational, recreational, residential, business, and other purposes requiring the grant of long-term leases”, approved August 9, 1955, to provide for Indian tribes to enter into certain leases without prior express approval from the Secretary of the Interior.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 6, 2011

Mr. HEINRICH (for himself, Mrs. BONO MACK, and Mrs. LUMMIS) introduced the following bill; which was referred to the Committee on Natural Resources

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## A BILL

To amend the Act titled “An Act to authorize the leasing of restricted Indian lands for public, religious, educational, recreational, residential, business, and other purposes requiring the grant of long-term leases”, approved August 9, 1955, to provide for Indian tribes to enter into certain leases without prior express approval from the Secretary of the Interior.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Helping Expedite and  
3 Advance Responsible Tribal Home ownership Act of  
4 2011” or the “HEARTH Act of 2011”.

5 **SEC. 2. APPROVAL OF, AND REGULATIONS RELATED TO,**  
6 **TRIBAL LEASES.**

7       The first section of the Act titled “An Act to author-  
8 ize the leasing of restricted Indian lands for public, reli-  
9 gious, educational, recreational, residential, business, and  
10 other purposes requiring the grant of long-term leases”,  
11 approved August 9, 1955 (25 U.S.C. 415), is amended  
12 as follows:

13           (1) In subsection (d)—

14                   (A) in paragraph (4), by striking “the  
15 Navajo Nation” and inserting “an applicable  
16 Indian tribe”;

17                   (B) in paragraph (6), by striking “the  
18 Navajo Nation” and inserting “an Indian  
19 tribe”;

20                   (C) in paragraph (7), by striking “and”  
21 after the semicolon at the end;

22                   (D) in paragraph (8)—

23                           (i) by striking “the Navajo Nation”;

24                           (ii) by striking “with Navajo Nation  
25 law” and inserting “with applicable tribal  
26 law”; and

1 (iii) by striking the period at the end  
2 and inserting a semicolon; and

3 (E) by adding at the end the following:

4 “(9) the term ‘Indian tribe’ has the meaning  
5 given such term in section 102 of the Federally Rec-  
6 ognized Indian Tribe List Act of 1994 (25 U.S.C.  
7 479a); and

8 “(10) the term ‘individually owned allotted  
9 land’ means a parcel of land that—

10 “(A)(i) is located within the jurisdiction of  
11 an Indian tribe; or

12 “(ii) is held in trust or restricted status by  
13 the United States for the benefit of an Indian  
14 tribe or a member of an Indian tribe; and

15 “(B) is allotted to a member of an Indian  
16 tribe.”.

17 (2) By adding at the end the following:

18 “(h) TRIBAL APPROVAL OF LEASES.—

19 “(1) IN GENERAL.—At the discretion of any In-  
20 dian tribe, any lease by the Indian tribe for the pur-  
21 poses authorized under subsection (a) (including any  
22 amendments to subsection (a)), except a lease for  
23 the exploration, development, or extraction of any  
24 mineral resources, shall not require the approval of  
25 the Secretary, if the lease is executed under the trib-

1 al regulations approved by the Secretary under this  
2 subsection and the term of the lease does not ex-  
3 ceed—

4 “(A) in the case of a business or agricul-  
5 tural lease, 25 years, except that any such lease  
6 may include an option to renew for up to 2 ad-  
7 ditional terms, each of which may not exceed 25  
8 years; and

9 “(B) in the case of a lease for public, reli-  
10 gious, educational, recreational, or residential  
11 purposes, 75 years, if such a term is provided  
12 for by the regulations issued by the Indian  
13 tribe.

14 “(2) ALLOTTED LAND.—Paragraph (1) shall  
15 not apply to any lease of individually owned Indian  
16 allotted land.

17 “(3) AUTHORITY OF SECRETARY OVER TRIBAL  
18 REGULATIONS.—

19 “(A) IN GENERAL.—The Secretary shall  
20 have the authority to approve or disapprove any  
21 tribal regulations issued in accordance with  
22 paragraph (1).

23 “(B) CONSIDERATIONS FOR APPROVAL.—  
24 The Secretary shall approve any tribal regula-

tion issued in accordance with paragraph (1), if  
the tribal regulations—

“(i) are consistent with any regulations issued by the Secretary under subsection (a) (including any amendments to the subsection or regulations); and

“(ii) provide for an environmental review process that includes—

“(I) the identification and evaluation of any significant effects of the proposed action on the environment; and

“(II) a process for ensuring that—

“(aa) the public is informed of, and has a reasonable opportunity to comment on, any significant environmental impacts of the proposed action identified by the Indian tribe; and

“(bb) the Indian tribe provides responses to relevant and substantive public comments on any such impacts before the Indian tribe approves the lease.

1 “(4) REVIEW PROCESS.—

2 “(A) IN GENERAL.—Not later than 120  
3 days after the date on which the tribal regula-  
4 tions described in paragraph (1) are submitted  
5 to the Secretary, the Secretary shall review and  
6 approve or disapprove the regulations.

7 “(B) WRITTEN DOCUMENTATION.—If the  
8 Secretary disapproves the tribal regulations de-  
9 scribed in paragraph (1), the Secretary shall in-  
10 clude written documentation with the dis-  
11 approval notification that describes the basis for  
12 the disapproval.

13 “(C) EXTENSION.—The deadline described  
14 in subparagraph (A) may be extended by the  
15 Secretary, after consultation with the Indian  
16 tribe.

17 “(5) FEDERAL ENVIRONMENTAL REVIEW.—  
18 Notwithstanding paragraphs (3) and (4), if an In-  
19 dian tribe carries out a project or activity funded by  
20 a Federal agency, the Indian tribe shall have the au-  
21 thority to rely on the environmental review process  
22 of the applicable Federal agency rather than any  
23 tribal environmental review process under this sub-  
24 section.

1           “(6) DOCUMENTATION.—If an Indian tribe exe-  
2           cutes a lease pursuant to tribal regulations under  
3           paragraph (1), the Indian tribe shall provide the  
4           Secretary with—

5                   “(A) a copy of the lease, including any  
6                   amendments or renewals to the lease; and

7                   “(B) in the case of tribal regulations or a  
8                   lease that allows for lease payments to be made  
9                   directly to the Indian tribe, documentation of  
10                  the lease payments that are sufficient to enable  
11                  the Secretary to discharge the trust responsi-  
12                  bility of the United States under paragraph (7).

13           “(7) TRUST RESPONSIBILITY.—

14                   “(A) IN GENERAL.—The United States  
15                   shall not be liable for losses sustained by any  
16                   party to a lease executed pursuant to tribal reg-  
17                   ulations under paragraph (1).

18                   “(B) AUTHORITY OF SECRETARY.—Pursu-  
19                   ant to the authority of the Secretary to fulfill  
20                   the trust obligation of the United States to the  
21                   applicable Indian tribe under Federal law (in-  
22                   cluding regulations), the Secretary may, upon  
23                   reasonable notice from the applicable Indian  
24                   tribe and at the discretion of the Secretary, en-

1 force the provisions of, or cancel, any lease exe-  
2 cuted by the Indian tribe under paragraph (1).

3 “(8) COMPLIANCE.—

4 “(A) IN GENERAL.—An interested party,  
5 after exhausting of any applicable tribal rem-  
6 edies, may submit a petition to the Secretary,  
7 at such time and in such form as the Secretary  
8 determines to be appropriate, to review the  
9 compliance of the applicable Indian tribe with  
10 any tribal regulations approved by the Sec-  
11 retary under this subsection.

12 “(B) VIOLATIONS.—If, after carrying out  
13 a review under subparagraph (A), the Secretary  
14 determines that the tribal regulations were vio-  
15 lated, the Secretary may take any action the  
16 Secretary determines to be necessary to remedy  
17 the violation, including rescinding the approval  
18 of the tribal regulations and reassuming respon-  
19 sibility for the approval of leases of tribal trust  
20 lands.

21 “(C) DOCUMENTATION.—If the Secretary  
22 determines that a violation of the tribal regula-  
23 tions has occurred and a remedy is necessary,  
24 the Secretary shall—



1 “(i) make a written determination  
2 with respect to the regulations that have  
3 been violated;

4 “(ii) provide the applicable Indian  
5 tribe with a written notice of the alleged  
6 violation together with such written deter-  
7 mination; and

8 “(iii) prior to the exercise of any rem-  
9 edy, the rescission of the approval of the  
10 regulation involved, or the reassumption of  
11 lease approval responsibilities, provide the  
12 applicable Indian tribe with—

13 “(I) a hearing that is on the  
14 record; and

15 “(II) a reasonable opportunity to  
16 cure the alleged violation.

17 “(9) SAVINGS CLAUSE.—Nothing in this sub-  
18 section shall affect subsection (e) or any tribal regu-  
19 lations issued under that subsection.”.

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